

# SESSION LAWS

OF

## HAWAII

PASSED BY THE

### TWENTIETH STATE LEGISLATURE

STATE OF HAWAII

### REGULAR SESSION

1999

Convened on Wednesday, January 20, 1999

and

Adjourned sine die on Tuesday, May 4, 1999

Published under Authority of  
Section 23G-13, Hawaii Revised Statutes  
by the

Revisor of Statutes  
State of Hawaii  
Honolulu, Hawaii



EXHIBIT

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(c) The agency appointment shall be terminated, and the registered office discontinued if so provided, thirty-one days after the date on which the statement was filed.

**§415B- Amended and restated articles of incorporation.** (a) A domestic corporation may at any time amend and restate its articles of incorporation by complying with the procedures and requirements under sections 415B-37 and 415B-40.

(b) Upon their adoption, the amended and restated articles of incorporation shall set forth:

- (1) All of the operative provisions of the articles of incorporation as theretofore amended;
- (2) The information required under section 415B-38; and
- (3) A statement that the amended and restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

(c) The amended and restated articles of incorporation shall be delivered to the director for filing. The director may certify the amended and restated articles of incorporation as the articles of incorporation currently in effect, without including the information required to be filed by subsection (b)(2) and (3)."

SECTION 3. Section 415-8, Hawaii Revised Statutes, is amended to read as follows:

"§415-8 Corporate name. The corporate name:

- (1) Shall contain the word "corporation", "incorporated", or "limited", or shall contain an abbreviation of one of the words; and
- (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, domestic partnership, [or] domestic limited liability company, or domestic limited liability partnership existing under the laws [ ] of this State, or any foreign corporation, foreign partnership, [or] foreign limited liability company, or foreign limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter, except that this provision shall not apply if the applicant files with the director either of the following:

- (A) The written consent of the other corporation or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name[.]; or
- (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State."

SECTION 4. Section 415-35, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All corporate powers shall be exercised by or under authority of, and the business and affairs of a corporation shall be managed under the direction of, a board of directors except as may be otherwise provided in this chapter or the articles of incorporation. If any such provision is made in the articles of incorporation, the

powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. [At least one member of every board of directors shall be a resident of this State. If there is no such director who is a member of the board, the board may not function except to elect a new director who is a resident of this State.] Directors need not be shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation."

SECTION 5. Section 415-54, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The articles of incorporation shall be delivered to and filed by the director and shall set forth:

- (1) The name of the corporation;
- (2) The aggregate number of shares which the corporation shall have authority to issue, and, if the shares are to be divided into classes, the number of shares of each class;
- (3) The mailing address of its initial or principal office[.]; and, if the corporation is required at the time of incorporation to have a registered office and registered agent in this State, the street address of the corporation's initial registered office and the name of its initial registered agent at that office, provided that where no specific street address is available[.]; for the corporation's initial or principal office or for the corporation's registered office, the rural route post office number or post office box designated or made available by the United States Postal Service;
- (4) The number of directors constituting the initial board of directors and the names and residence addresses of the individuals who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualified; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service; and
- (5) The name, title, and residence address of each officer; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service."

SECTION 6. Section 415-58, Hawaii Revised Statutes, is amended to read as follows:

"§415-58 Right to amend articles of incorporation. (a) A corporation may amend its articles of incorporation from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only those provisions which may be lawfully contained in original articles of incorporation at the time of making the amendment[.]; and, if a change in shares or the rights of shareholders, or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, the provisions as may be necessary to effect the change, exchange, reclassification, or cancellation.

(b) In particular, and without limitation upon this general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

- (1) To change its corporate name;

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- (4) The fictitious name of another foreign limited liability company authorized to transact business in this State; or
- (5) Any trade name, service mark, or trademark registered in this State."

SECTION 34. Section 482-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) It shall be unlawful for any person to adopt or use a print, label, trademark, service mark, or trade name which is identical to or confusingly similar with any registered print, label, trademark, service mark, or trade name, or the name of any partnership, corporation, [or] limited liability company, or limited liability partnership registered in accordance with the laws on partnerships, corporations, [or] limited liability companies[,], or limited liability partnerships."

SECTION 35. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>3</sup>

SECTION 36. This Act shall take effect upon its approval; provided that:

- (1) Sections 11, 15, 21, 24, 26, and 19 shall take effect on July 1, 1999;
- (2) Any corporation, professional corporation, or nonprofit corporation involuntarily dissolved prior to July 1, 1999, may be reinstated within ninety days, pursuant to the requirements, other than the two-year requirement, of sections 415-95, 415A-18, or 415B-98, Hawaii Revised Statutes (HRS), respectively; and
- (3) Any general partnership, domestic or foreign limited liability partnership, or certificate of limited partnership involuntarily cancelled prior to July 1, 1999, may be reinstated within ninety days, pursuant to the requirements, other than the two-year requirement, of section 425-14, 425-171, or 425D-203.6, HRS, respectively.

(Approved July 2, 1999.)

## Notes

1. So in original.  
2. "Or" should not be underscored.  
3. Edited pursuant to HRS §23G-16.5.

## ACT 250

S.B. NO. 1142

A Bill for an Act Relating to the Names of Corporations, Partnerships, and Limited Liability Companies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 415, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§415. Administrative order of abatement for infringement of corporate name. (a) Any domestic corporation in good standing or foreign corporation authorized to do business in this State claiming that the name of any domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or limited liability company authorized to transact business in this State is substantially identical to, or